

I certify that the attached is a true and correct copy of HB # 110, which was filed of record on JUL 1 1987 and referred to the committee on: Natural Resources

1987 JUL -5 PM 4:08
HOUSE OF REPRESENTATIVES

SECOND CALLED SESSION

FILED JUL 1 1987

Betty Murray
Chief Clerk of the House

By *Cliff Johnson*

H. B. No. 110

A BILL TO BE ENTITLED

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AN ACT

relating to administrative penalties for violation of certain water rights laws, rules, orders, permits, certificates, and certified filings.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Chapter 11, Water Code, is amended by adding Section 11.098 to read as follows:

Sec. 11.098. ADMINISTRATIVE PENALTY. (a) If a person violates this chapter, a rule or order adopted under this chapter, or a permit, certified filing, or certificate of adjudication issued under or subject to this chapter, the commission may assess a civil penalty against that person as provided by this section.

(b) A person who violates this chapter other than Section 11.031 of this code, or who violates a rule, order, permit, certified filing, or certificate of adjudication is liable for a penalty in an amount as determined under this section not to exceed \$5,000 a day. Each day a violation continues may be considered a separate violation for purposes of penalty assessment.

(c) In determining the amount of the penalty, the commission shall consider:

(1) the nature, circumstances, extent, duration, and gravity of the prohibited act with special emphasis on the potential impact of the violation on the stream and on the health, welfare, and safety of the general public, as well as of persons

1 with a right to use water from the stream;

2 (2) with respect to the alleged violator:

3 (A) the history and extent of previous
4 violations;

5 (B) the degree of culpability including whether
6 the violation could have been reasonably avoided;

7 (C) the demonstrated good faith, including
8 actions taken by the alleged violator to rectify the cause of the
9 violation;

10 (D) any economic benefit gained through the
11 violation; and

12 (E) the amount necessary to deter future
13 violations; and

14 (3) any other matters that justice may require.

15 (d) After examination of a possible violation and the facts
16 surrounding that possible violation, if the executive director
17 concludes that a violation has occurred, the executive director may
18 issue a preliminary report stating the facts on which that
19 conclusion is based, recommending that a civil penalty under this
20 section be imposed on the person charged, and recommending the
21 amount of that proposed penalty. The executive director shall base
22 the recommended amount of the proposed penalty on the factors
23 provided by Subsection (c) of this section, and the executive
24 director shall analyze each factor for the benefit of the
25 commission.

26 (e) Not later than the 10th day after the date on which the
27 preliminary report is issued under Subsection (d) of this section,

1 the executive director shall give written notice of the report to
2 the person charged with the violation. The notice shall include a
3 brief summary of the charges, a statement of the amount of the
4 penalty recommended, and a statement of the right of the person
5 charged to a hearing on the occurrence of the violation, or the
6 amount of the penalty, or both the occurrence of the violation and
7 the amount of the penalty.

8 (f) Not later than the 20th day after the date on which the
9 notice required by Subsection (e) of this section is received, the
10 person charged may give to the commission written consent to the
11 executive director's report, including the recommended penalty, or
12 may make a written request for a hearing.

13 (g) If the person charged with the violation consents to the
14 penalty recommended by the executive director or fails to timely
15 respond to the notice required by Subsection (e) of this section,
16 the commission by order shall either assess that penalty or order a
17 hearing to be held on the findings and recommendations in the
18 executive director's report. If the commission assesses the
19 penalty recommended by the report, the commission shall give
20 written notice to the person charged of its decision.

21 (h) If the person charged requests or the commission orders
22 a hearing, the commission shall call a hearing and give notice of
23 the hearing. As a result of the hearing, the commission by order
24 may find that a violation has occurred and may assess a civil
25 penalty, may find that a violation has occurred but that no penalty
26 should be assessed, or may find that no violation has occurred.
27 All proceedings under this subsection are subject to the

1 Administrative Procedure and Texas Register Act (Article 6252-13a,
2 Vernon's Texas Civil Statutes). In making a penalty decision, the
3 commission shall analyze each of the factors provided by Subsection
4 (c) of this section.

5 (i) The commission shall give notice of its decision to the
6 person charged, and if the commission finds that a violation has
7 occurred and has assessed a civil penalty, the commission shall
8 give written notice to the person charged of its findings, of the
9 amount of the penalty, and of his right to judicial review of the
10 commission's order. If the commission is required to give notice
11 of a civil penalty under this subsection or Subsection (g) of this
12 section, the commission shall file notice of its decision in the
13 Texas Register not later than the 10th day after the date on which
14 the decision is adopted.

15 (j) Within the 30-day period immediately following the day
16 on which the commission's order is final, as provided by Section
17 16(c), Administrative Procedure and Texas Register Act (Article
18 6252-13a, Vernon's Texas Civil Statutes), the person charged with
19 the penalty shall:

20 (1) pay the penalty in full; or

21 (2) if the person seeks judicial review of either the
22 fact of the violation or the amount of the penalty or of both the
23 fact of the violation and the amount of the penalty:

24 (A) forward the amount of the penalty to the
25 commission for placement in an escrow account; or

26 (B) instead of payment into an escrow account,
27 post with the commission a supersedeas bond in a form approved by

1 the commission for the amount of the penalty to be effective until
2 all judicial review of the order or decision is final.

3 (k) Failure to forward the money to or to post the bond with
4 the commission within the time provided by Subsection (j) of this
5 section results in a waiver of all legal rights to judicial review.
6 Also, if the person charged fails to forward the money or post the
7 bond as provided by Subsection (j) of this section, the commission
8 or the executive director may forward the matter to the attorney
9 general for enforcement.

10 (l) Judicial review of the order or decision of the
11 commission assessing the penalty shall be under the substantial
12 evidence rule and shall be instituted by filing a petition with a
13 district court in Travis County, as provided by Section 19,
14 Administrative Procedure and Texas Register Act (Article 6252-13a,
15 Vernon's Texas Civil Statutes).

16 (m) A penalty collected under this section shall be
17 deposited in the state treasury to the credit of the general
18 revenue fund.

19 (n) Notwithstanding any other provision to the contrary, the
20 commission may compromise, modify, or remit, with or without
21 condition, any civil penalty imposed under this section.

22 (o) Payment of an administrative penalty under this section
23 shall be full and complete satisfaction of the violation for which
24 the administrative penalty is assessed and shall preclude any other
25 civil or criminal penalty for the same violation.

26 SECTION 2. Section 11.031, Water Code, is amended by adding
27 Subsection (c) to read as follows:

1 (c) In addition to the penalty provided by Subsection (b) of
2 this section, a person who fails to timely file an annual report as
3 provided by this section is liable for an administrative penalty
4 for that failure in an amount of \$50 plus an additional
5 administrative penalty of \$25 for each complete month the report is
6 delinquent beginning March 1 on which the report becomes due.
7 Section 11.098 of this code applies to the assessment and
8 collection of an administrative penalty under this subsection. An
9 administrative penalty assessed under this subsection may not
10 exceed \$200 for any failure to file a report in a particular year.

11 SECTION 3. This Act takes effect November 1, 1987.

12 SECTION 4. The importance of this legislation and the
13 crowded condition of the calendars in both houses create an
14 emergency and an imperative public necessity that the
15 constitutional rule requiring bills to be read on three several
16 days in each house be suspended, and this rule is hereby suspended.

HOUSE COMMITTEE REPORT

1987 JUL 13 PM 9:34

HOUSE OF REPRESENTATIVES

1st Printing

By Johnson of Anderson

H.B. No. 110

A BILL TO BE ENTITLED

AN ACT

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18 separate violation for purposes of penalty assessment.

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22 gravity of the prohibited act with special emphasis on the
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24 welfare, and safety of the general public, as well as of persons

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15 constitutional rule requiring bills to be read on three several
16 days in each house be suspended, and this rule is hereby suspended.

COMMITTEE REPORT

The Honorable Gib Lewis
Speaker of the House of Representatives

7-13-87
(date)

Sir:

We, your COMMITTEE ON NATURAL RESOURCES,

to whom was referred HB 110 have had the same under consideration and beg to report
(measure)
back with the recommendation that it

- do pass, without amendment.
- do pass, with amendment(s).
- do pass and be not printed; a Complete Committee Substitute is recommended in lieu of the original measure.

A fiscal note was requested. yes no An actuarial analysis was requested. yes no

An author's fiscal statement was requested. yes no

The Committee recommends that this measure be placed on the ~~(Local)~~ or ~~(Consent)~~ Calendar.

This measure proposes new law. amends existing law.

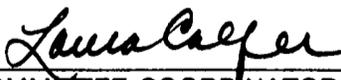
House Sponsor of Senate Measure _____

The measure was reported from Committee by the following vote:

	AYE	NAY	PNV	ABSENT
Smith, T., Ch.	X			
Harris, J., V.C.				X
Johnson, C., C.B.O.	X			
Hammond				X
Holzheuser	X			
Russell				X
Shelley	X			
Toomey	X			
Yost	X			

Total
6 aye
0 nay
0 present, not voting
3 absent



 CHAIRMAN


 COMMITTEE COORDINATOR

BILL ANALYSIS

Background

Currently, the Texas Water Commission does not have the authority to assess administrative penalties under Chapter 11, Water Code.

Purpose of the Bill

This bill would allow the Texas Water Commission to assess administrative penalties for violations of Chapter 11, Water Code, or rules promulgated thereunder.

Section by Section Analysis

SECTION 1. Amends Chapter 11, Water Code, by adding Section 11.098, which provides for an administrative penalty for violations of Chapter 11, Water Code, or rules promulgated thereunder. Sets out a schedule of penalties for the stated violations, and provides guidelines for assessing penalties. Provides for a method for the accused to obtain a hearing and notice requirements and provides for payment of the penalty with procedures for appeal.

SECTION 2. Amends Section 11.031, Water Code, to provide for an administrative penalty with certain limits and administered according to Section 11.098, Water Code.

SECTION 3. Effective date is November 1, 1987.

SECTION 4. Emergency clause.

Rulemaking Authority

While this bill does not grant rulemaking authority per se, it is the opinion of this committee that the Texas Water Commission may have to promulgate rules relating to the administration of the administrative penalties created in this bill.

Summary of Committee Action

Public notice was posted in accordance to the rules and a public hearing was held on July 13, 1987.

On July 13, 1987, the full committee voted to report HB110 with the recommendation that it do pass by a record vote of six ayes, zero nays, and zero present, not voting.

The following person served as a resource witness on the bill:

Larry Soward, Executive Director
Texas Water Commission

LEGISLATIVE BUDGET BOARD

Austin, Texas

FISCAL NOTE

July 9, 1987

TO: Honorable Terral Smith, Chair
Committee on Natural Resources
House of Representatives
Austin, Texas

In Re: House Bill No. 110
Second Called Session
By: C. Johnson

FROM: Jim Oliver, Director

In response to your request for a Fiscal Note on House Bill No. 110 (relating to administrative penalties for violation of certain water rights laws, rules, orders, permits certificates, and certified filings) this office has determined the following:

No fiscal implication to the State or units of local government is anticipated.

Source: Water Commission;
LBB Staff: JO, HES, JWH, JG, AF

SECOND CALLED SESSION

H. B. No. 110

By Cliff Johnson

A BILL TO BE ENTITLED
AN ACT

relating to administrative penalties for violation of certain water rights laws, rules, orders, permits, certificates, and certified filings.

JUL 1 1987

1. Filed with the Chief Clerk.

JUL 6 1987

2. Read first time and Referred to Committee on

Natural Resources

JUL 13 1987

3. Reported favorably (~~as amended~~ ~~as substituted~~) and sent to Printer at 5:30 pm.

JUL 13 1987

4. Printed and distributed at 9:33 pm

JUL 13 1987

JUL 14 1987

5. Sent to Committee on Calendars at 8:10am

6. Read second time (amended); passed to third reading (failed) by (Non-Record Vote) (Record Vote of _____ yeas, _____ nays, _____ present, not voting).

7. Motion to reconsider and table the vote by which H.B. _____ was ordered engrossed prevailed (failed) by a (Non-Record Vote) (Record Vote of _____ yeas, _____ nays, and _____ present, not voting).

8. Constitutional Rule requiring bills to be read on three several days suspended (failed to suspend) by a four-fifths vote of _____ yeas, _____ nays, and _____ present, not voting.

JUL 15 1987

LAI D ON TABLE
SUBJECT TO CALL

9. Read third time (amended); finally passed (failed) by (Non-Record Vote) (Record Vote of _____ yeas, _____ nays, _____ present, not voting).

10. Caption ordered amended to conform to body of bill.

11. Motion to reconsider and table the vote by which H. B. _____ was finally passed prevailed (failed) by a (Non-Record Vote) (Record Vote of _____ yeas, _____ nays, and _____ present, not voting).

12. Ordered Engrossed at _____

13. Engrossed.

14. Returned to Chief Clerk at _____

15. Sent to Senate.

Chief Clerk of the House

16. Received from the House

17. Read, referred to Committee on _____

18. Reported favorably

19. Reported adversely, with favorable Committee Substitute; Committee Substitute read first time.

20. Ordered not printed.

21. Regular order of business suspended by (a viva voce vote.) _____ yeas, _____ nays.)

1987 JUL 13 PM 9 23

HOUSE OF REPRESENTATIVES

27

_____ 22. To permit consideration, reading and passage, Senate and Constitutional Rules suspended by vote of _____ yeas, _____ nays.

_____ 23. Read second time _____ passed to third reading by:
(a viva voce vote.)
(_____ yeas, _____ nays.)

_____ 24. Caption ordered amended to conform to body of bill.

_____ 25. Senate and Constitutional 3-Day Rules suspended by vote of _____ yeas,
_____ nays to place bill on third reading and final passage.

_____ 26. Read third time and passed by
(a viva voce vote.)
(_____ yeas, _____ nays.)

OTHER ACTION: OTHER ACTION:

Secretary of the Senate

_____ 27. Returned to the House.

_____ 28. Received from the Senate (with amendments,
(as substituted.)

_____ 29. House (Concurred) (Refused to Concur) in Senate (Amendments) (Substitute) by a (Non-Record Vote) (Record Vote of _____ yeas, _____ nays, _____ present, not voting).

_____ 30. Conference Committee Ordered.

_____ 31. Conference Committee Report Adopted (Rejected) by a (Non-Record Vote) (Record Vote of _____ yeas, _____ nays, and _____ present, not voting).

_____ 32. Ordered Enrolled at _____